

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 238

Introduced by Assembly Member Huber

February 3, 2011

An act to amend Section 2031.240 of the Code of Civil Procedure, relating to discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as amended, Huber. Civil procedure: discovery: objections.

The Civil Discovery Act permits a party to a civil action to obtain discovery, as specified, by inspecting documents, tangible things, and land or other property in the possession of any other party to the action. The act provides for procedures that must be followed when the responding party objects to part or all of an inspection demand.

~~This bill would authorize the party making the demand to move for an order to require the responding party to produce a privilege log, when that party objects to a demand on the basis of privilege or work product, as specified. If the court, in its discretion, determines that a privilege log is necessary in order to determine the validity of the claim, the court shall order the party claiming the privilege to prepare and serve a privilege log upon the terms and conditions deemed appropriate by the court to provide sufficient factual information in its response for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.~~

~~The bill would specify that the parties may voluntarily comply with these provisions or stipulate that all parties will comply with these provisions. The bill would require that the compliance be presumed to~~

satisfy existing provisions related to objecting to a demand for inspection.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 2031.240 of the Code of Civil Procedure*
2 *is amended to read:*

3 2031.240. (a) If only part of an item or category of item in a
4 demand for inspection, copying, testing, or sampling is
5 objectionable, the response shall contain a statement of compliance,
6 or a representation of inability to comply with respect to the
7 remainder of that item or category.

8 (b) If the responding party objects to the demand for inspection,
9 copying, testing, or sampling of an item or category of item, the
10 response shall do both of the following:

11 (1) Identify with particularity any document, tangible thing,
12 land, or electronically stored information falling within any
13 category of item in the demand to which an objection is being
14 made.

15 (2) Set forth clearly the extent of, and the specific ground for,
16 the objection. If an objection is based on a claim of privilege, the
17 particular privilege invoked shall be stated. If an objection is based
18 on a claim that the information sought is protected work product
19 under Chapter 4 (commencing with Section 2018.010), that claim
20 shall be expressly asserted.

21 (c) *If an objection is based on a claim of privilege or a claim*
22 *that the information sought is protected work product, the response*
23 *shall provide sufficient factual information for other parties to*
24 *evaluate the merits of that claim, including, if necessary, a privilege*
25 *log.*

26 ~~SECTION 1. Section 2031.240 of the Code of Civil Procedure~~
27 ~~is amended to read:~~

28 ~~2031.240. (a) If only part of an item or category of item in an~~
29 ~~inspection demand is objectionable, the response shall contain a~~
30 ~~statement of compliance, or a representation of inability to comply~~
31 ~~with respect to the remainder of that item or category.~~

1 (b) If the responding party objects to the demand for inspection
2 of an item or category of item, the response shall do both of the
3 following:

4 (1) Identify with particularity any document, tangible thing, or
5 land falling within any category of item in the demand to which
6 an objection is being made.

7 (2) Set forth clearly the extent of, and the specific ground for,
8 the objection. If an objection is based on a claim of privilege, the
9 particular privilege invoked shall be stated. If an objection is based
10 on a claim that the information sought is protected work product
11 under Chapter 4 (commencing with Section 2018.010), that claim
12 shall be expressly asserted.

13 (c) When the responding party objects to a demand on the basis
14 of privilege or work product, the party making the demand may
15 move for an order requiring the responding party to produce a
16 privilege log. The motion shall comply with the requirements of
17 Section 2031.310.

18 (1) If the court, in its discretion, determines that a privilege log
19 is necessary in order to determine the validity of the claim, the
20 court shall order the party claiming the privilege to prepare and
21 serve a privilege log upon the terms and conditions deemed
22 appropriate by the court.

23 (2) Unless otherwise ordered by the court, the privilege log shall
24 include, as to each item for which a claim of privilege or other
25 protection from discovery has been made, all of the following:

26 (A) The author or authors.

27 (B) The recipient or recipients.

28 (C) The date or dates.

29 (D) The length.

30 (E) The nature of the document or its intended purpose.

31 (F) The basis for the objection.

32 (3) The parties may voluntarily comply with this subdivision
33 or stipulate that all parties will comply with this subdivision. That
34 compliance shall be presumed to satisfy the standard set forth in
35 subdivision (b).